

Preparing for Compliance Enforcement *Microbeads in Toiletries Regulations*

KEY POINTS TO MAKE IF/WHEN ENVIRONMENT CLIMATE CHANGE CANADA (ECCC) COMES KNOCKING AT YOUR DOOR

Please note the following information provided below should not be relied upon as legal advice. CA members should consult with legal counsel to verify the applicability of any information provided.

BACKGROUND

Late this past August (2019), Cosmetics Alliance (CA) Canada was made aware of some compliance action being pursued by Environment and Climate Change Canada (ECCC) regarding potential products containing microbeads. As members are aware, the **FULL** prohibition regarding [Microbeads in Toiletries](#) came into effect July 1, 2019. As of this date, it is prohibited to manufacture or import or offer for sale any “toiletries” (including both cosmetic products as well as natural and non-prescription products) containing the “microbeads of concern” as listed on Schedule 1 [“List of Toxic Substances”] of the Canadian Environmental Protection Act, 1999 (CEPA 99’).

Given the relatively public profile of the microbeads and emerging microplastics issue, we anticipate that ECCC will likely be pursuing cyclic compliance activities regarding potentially implicated products. As reported to members in August, CA Canada members can expect to potentially receive visits from the ECCC Enforcement Branch potentially seeking to procure samples or express concerns with potential products in your portfolios that may potentially be deemed “out of compliance” with the Microbeads in Toiletries Regulations.

To prepare for any such compliance enforcement action – CA members are advised to consider the following when addressing any ECCC follow-up in this regard.

MINIMIZING SCOPE OF ACTION

The *Microbeads in Toiletries Regulations* is intentionally narrow and applies only to a very defined and limited scope reflecting the specific “microbeads of concern” demonstrated to contribute to plastic litter in aquatic waterways. This scope is intended to mirror the scope of actions delivered under the corresponding US Federal Legislation (*Microbeads Free Water Act*) to ensure consistency across Canadian/US borders.

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Therefore, any corresponding compliance action should be focused only on products considered to be within this defined and limited scope. Members are well within their rights to object to any action that extends beyond this scope as being outside the authority of these Regulations.

WHAT MEMBERS NEED TO DO

BE PREPARED FOR A VISIT!

Should members be visited by ECCC compliance officers, it is strongly recommended that you ensure that any action be limited only to:

1. The microbeads of concern (as outlined under CEPA 99'); and
2. The scope of products covered by the regulations ("toiletries")

To assist in this regard, members are encouraged to insist on the following key points in supporting their dialogue with officials:

KEY POINT # 1:

The 'plastic microbeads of concern' that are subject to these Regulations are specifically those that are: Specifically,

“solid plastic particles that are less than or equal to 5 mm (in the largest external dimension) which are added to personal care products to exfoliate or cleanse the human body”

[Final Order Adding “Microbeads” to the List of ‘Toxic’ Substances under CEPA 99’ – Canada Gazette II, Vol. 150, No. 13, June 2016]

KEY POINT # 2:

This same limitation in intended scope, is clearly reflected in the definition of 'Toiletries', which within the context of these Regulations means:

“... any personal hair, skin, teeth or mouth care products for cleansing or hygiene, including exfoliants and any of those products that is also a natural health product as defined in the Natural Health Products Regulations or a non-prescription drug”.

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[“Microbeads in Toiletries Regulation” – Canada Gazette II, Vol. 151, No. 12, June 14, 2017]

ADDITIONAL PREPARATIONS

As [previously recommended](#), CA Canada highly recommends that members proactively consider the following internal action, in anticipation of any such compliance enforcement considerations:

- Using the above rationale, prepare a formulation defense narrative that addresses why your formulas do not contain any “microbeads of concern” as per the original intent of the CEPA Schedule 1 Listing and the definition of ‘toiletries’ as referenced in the Regulations
- Work with Legal Counsel (as appropriate) to summarize your approach to the management of any “microbeads of concern” within your product portfolio (including reformulation details undertaken) in order to demonstrate your commitment to the underlying intent and understanding of the scope of applicability of the Regulations
- For those of you have had the benefit of attending the multitude of CA Canada/US PCPC sponsored events over the course of the past few years where this topic has been front and centre, be prepared to reflect on the corresponding key messages that ECCC representatives have consistently stressed with regards of the intent of this action; namely, to be ‘consistent and in line with’ the scope of action per the *US Microbeads Free Waters Act* which is clearly limited to microbeads “... *used to exfoliate or cleanse the human body*”.
- Recall, that in consultations leading up to the finalization of the “listing Name” ultimately reflected under Schedule 1 of CEPA 99’, that officials made it clear that this Schedule was a “list of substances” and as such cannot reflect ‘functionality or use’ to qualify the listing, which in turn was a key consideration in clearly outlining the specific “microbeads of concern” within the accompanying explanatory note included within the Regulatory Impact Assessment (RIAS) of the corresponding Final Order and Regulation.

REGULATORY PRECEDENCE

CA Canada is pleased to report that the two key points outlined above were shared with officials in August (2019) and proved **PIVOTAL** in ensuring the limitation of scope of corresponding actions undertaken. Post enforcement follow-up confirmed these specific details, with officials affirming the intended limitation in scope to the specific ‘microbeads’ and ‘toiletries’ outlined.

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Although officials 'reserve the right' to pursue other related compliance measures, it is clear that their present action should respect the defined and limited scope as outlined above.

PLEASE REPORT COMPLIANCE ACTION

Although CA Canada is not aware of any additional compliance activities being pursued to date, it is likely only a matter of time whereby it is anticipated that cyclic enforcement activities will be pursued by ECCC. To help us monitor developments in this area, we ask members to please notify CA Canada as soon as possible, should you become subject to any such actions, moving forward [regulatory@cosmeticsalliance.ca].



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REFERENCES

1. [Microbeads in Toiletries Regulation](#)
2. CA Communication: [Important Emerging Developments – Enforcement Action: Microbeads in Toiletries Regulations](#)
3. [Microbeads Final Order](#)
4. [US Microbeads Free Waters Act 2015](#)